

OST-95-206-14

Order 95-3-57



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED MAR 30 1995

Issued by the Department of Transportation
on the 30th day of March, 1995

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QA
U.S.-Toronto Service Proceeding

Docket 50168

ORDER

On March 16, 1995, Trans World Airlines ("TWA") filed a motion to compel the production of information concerning the revenue that will be diverted from the existing services of each applicant carrier if the carriers' application to provide U.S.-Toronto service is approved.¹ For the reasons stated below, we have decided to grant TWA's motion.

In support of its motion, TWA cited the Information Request attached as Appendix A to Order 95-2-57, which required each applicant's direct exhibits to include the net revenue anticipated from the proposed service for the forecast year and any anticipated traffic changes in existing markets. An answer in support of TWA's motion was filed by Continental Airlines, Inc. ("Continental"), while answers in opposition to the motion were filed by USAir, Inc. ("USAir"), Delta Air Lines, Inc. ("Delta"), and Northwest Airlines, Inc. ("Northwest"). USAir argued in opposing TWA's motion that "net revenue" in the evidence request refers to revenue after fare dilution. Delta, in turn, argued that "net revenue" forecasts relate only to anticipated revenue on the proposed route and that "anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case" in the evidence request must be viewed in the context of traffic forecasts relating to the service proposed in this proceeding, while going on to argue that it did not specifically take into account diversion from new U.S. carrier Toronto services because such diversion would not be a significant factor.² Northwest agreed with TWA that Delta appeared not to have complied with the evidence request in

¹ TWA also filed a motion to shorten the answer period, calling for answers by March 20, which we will dismiss as moot.

² Answer of Delta, p. 2.

Order 95-2-57, but went on to argue that it opposed TWA's motion if it were construed to be a request for additional self-diversion data beyond what was called for in that order.

While we agree with USAir, Delta and Northwest that "net revenue" refers to revenue after fare dilution, we cannot agree that "anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case" refers to anything other than revenue diversion. In light of the plain language of this section, our action here in granting TWA's motion to compel only clarifies that we asked the carriers to provide revenue diversion data in Order 95-2-57, and does not expand the scope of that request. In addition, we note that identical language has been used in other evidence requests where it has been interpreted as calling for revenue diversion information.³

Consistent with the clear language of the Evidence Request, we will therefore require the applicants to show the following: 1) all passenger traffic, both single-plane and connecting, diverted by the applicant's proposed service from the applicant's existing U.S.-Toronto services (including, where applicable, any service reduced or eliminated by the applicant upon or after initiation of U.S.-Toronto service under *pendente lite* exemption authority) by online O&D city-pair; 2) average fare per diverted passenger (including derivation of the average fare); 3) indirect expense by expense category (*e.g.*, passenger servicing, traffic servicing, passenger commissions, *etc.*) per diverted passenger (or other applicable unit), and the total expense; and 4) where applicable, direct expense by expense category (*e.g.*, fuel, other flying operations, maintenance, depreciation, *etc.*) for other nonstop or single-plane U.S.-Toronto service which would be reduced or eliminated under the applicant's proposal (services shown should include, where applicable, any service reduced or eliminated by the applicant upon or after initiation of U.S.-Toronto service under *pendente lite* exemption authority).

In order to give the applicants adequate time to compile the required information, the date for submission will be April 4, 1995. Rebuttal exhibits in the proceeding addressing information submitted in the original Direct exhibits will continue to be required by April 4, 1995, as well; however, supplemental Rebuttal exhibits addressing only the issue of revenue diversion will not be required until one week later, on April 11, 1995. Briefs will still be due April 25, 1995.

Accordingly,

1. We grant the motion of TWA to compel the production of information in the captioned case;

³ See, *e.g.*, *Guam/Saipan-Osaka Combination Service Case*, Docket 48871.

2. We dismiss the motion of TWA to shorten the answer period;
3. We direct all parties to file the information outlined above by April 4, 1995, in the form and under the conditions outlined in Order 95-2-57, and to file Rebuttal exhibits limited to the issue of revenue diversion by April 11, 1995;
4. To the extent not granted, deferred, or dismissed, we deny all requests in the captioned docket; and
5. We will serve a copy of this order on all parties in the captioned docket.

By:

PATRICK V. MURPHY
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

Dated : March 30, 1995